

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

TRANSFIRST GROUP INC., et al.,

Plaintiffs,

v.

DOMINIC J. MAGLIARDITI, et al.,

Defendants.

Case No. 2:17-cv-00487-APG-VCF

**ORDER GRANTING IN PART AND  
DENYING IN PART MOTION FOR  
LEAVE TO WITHDRAW MONTHLY  
EXPENSES FROM THE FANE TRUST**

(ECF No. 138)

Defendant Francine Magliarditi moves to withdraw over \$40,000 per month to pay expenses. She also seeks a one-time distribution to pay over \$109,000 in attorney's fees for both her own counsel and for her husband Dominic's counsel. She filed a breakdown of her requests in an *in camera* submission to the court. The plaintiffs oppose, arguing there is no support for the requested distributions, and over \$40,000 per month is unreasonable on its face.

I previously indicated in the preliminary injunction order that Francine could move to withdraw funds "for specific purposes upon a showing of good cause." ECF No. 109 at 17. I have discretion to modify the preliminary injunction to release funds to Francine to pay living expenses. *See S.E.C. v. Dowdell*, 175 F. Supp. 2d 850, 854 (W.D. Va. 2001) (stating if courts have the power to freeze assets they logically have the "corollary authority" to release funds for living expenses) (quoting *S.E.C. v. Duclaud Gonzalez de Castilla*, 170 F. Supp. 2d 427, 429 (S.D.N.Y. 2001)). To determine whether to release funds, I weigh Francine's interest in having funds for "ordinary and necessary living expenses" against the plaintiffs' interest in preventing the dissipation of assets. *See S.E.C. v. Dobbins*, No. 3:04-CV-0605-H, 2004 WL 957715, at \*3 (N.D. Tex. Apr. 14, 2004). In making this evaluation, I consider whether Francine has access to other sources of funds and whether the requested distributions are for luxury items rather than necessities. *Duclaud Gonzalez de Castilla*, 170 F. Supp. 2d at 430. I address below the various categories of requested distributions.

1           **A. Rents**

2           I allow a monthly distribution of \$1,000 per month to pay rent on the 9501 Canyon Mesa  
3 property in Las Vegas so that Francine has a place to live. However, Francine provides no reason  
4 why she requires \$6,400 per month for another home in California. Although she denies that  
5 home is a vacation home (ECF No. 144 at 6-7), she provides no explanation for why she needs it  
6 given that she resides in Las Vegas. Based on the lease Francine provided, the California home is  
7 a month-to-month rental, and thus she will not suffer severe financial hardship by cancelling it.  
8 *See* Francine Magliarditi's *In Camera* Submission of Monthly Budget Items for July 2017, Ex. A.  
9 I therefore deny the request for monthly rent for the California property.

10           **B. Utilities**

11           Because I have denied rent for the California property, I also deny the related utility  
12 expenses. As for the Nevada property, Francine requests \$58 for her gas bill and \$300 for her  
13 energy bill. I allow monthly distributions for these bills, but only for the exact amount of the  
14 bills. As the weather changes, Francine's gas bill may go up while her energy bill (which is \$256,  
15 not \$300) may go down. Consequently, I currently approve \$58 to pay the gas bill and \$256.39 to  
16 pay for the energy bill for the 9501 Canyon Mesa property. Future bills will need to be submitted  
17 for approval in the amount incurred only.

18           **C. Food**

19           Francine requests \$3,500 per month for food. That amount is unreasonable on its face.  
20 Per the U.S. Bureau of Labor Statistics for 2015 (the last available year), a family of 2.5 persons  
21 spent an average of \$7,023 per year on food. Francine offers no explanation why each month she  
22 needs half the amount that an average family spends on food for an entire year. She offers no  
23 evidentiary support for this request. I will allow a quarter of the annual average amount  
24 (\$1,755.75) for food for the remainder of 2017.

25       ////

26       ////

27       ////

1           **D. Miscellaneous**

2           Francine asks for \$1,000 per month for “miscellaneous” expenses. She provides no  
3 explanation as to what might fall into this category nor offers any evidence in support. This  
4 request is unreasonable on its face. I therefore deny it.

5           **E. Automobiles**

6           Francine requests \$633.08 per month for lease of a Mercedes Benz. She also requests  
7 \$91.41 to pay for insurance on the Mercedes Benz. She seeks to pay insurance on three other  
8 vehicles, although she provides no explanation for who owns the vehicles or why she is paying  
9 the insurance. Finally, she requests \$400 per month in gas.

10          I allow the \$633.08 per month for the lease of the Mercedes Benz. Per the lease contract  
11 Francine provided, she may suffer a substantial penalty if the lease is terminated early. *See In*  
12 *Camera* Submission, Ex. H. Additionally, I grant \$91.41 to pay the insurance on the Mercedes  
13 Benz. *Id.*, Ex. I at 2 (6-month premium of \$548.51).

14          I deny the request to pay insurance on the other vehicles. There is no explanation for why  
15 insurance for a Mazda, a Toyota, and a Saturn are necessary living expenses for Francine.

16          Finally, I allow \$175 per month for gas. Per the U.S. Bureau of Labor Statistics for 2015  
17 (the last available year), the average family spent \$2,090 per year for gas and motor oil. Francine  
18 has not presented evidence that her driving needs exceed that of an average family.

19           **F. Health Insurance**

20          I grant the request to pay for health insurance for Francine, her husband Dominic, and  
21 their adult child Alexandra. However, the evidence provided does not show what period the  
22 premium amount of \$1,132.55 covers. Upon proof that this amount is the monthly premium, it  
23 will be approved for a monthly distribution. If this is a semi-annual payment, I will approve a  
24 lump sum distribution.

25        ////

26        ////

27        ////



1           **G. Life Insurance**

2           I grant the request for \$2,316 per month for premium payments on three life insurance  
3 policies. However, if these policies lapse for any reason, Francine must notify the court  
4 immediately so that the funds to pay the premiums are no longer distributed to her.

5           **H. Renter's Insurance**

6           For the same reasons already discussed, I will not allow the renter's insurance for the  
7 California property.

8           **I. College Expenses**

9           I deny the request for college expenses. Francine's children are adults. These are not  
10 necessary expenses for Francine. Moreover, Francine does not explain why tuition would be a  
11 monthly (as opposed to a one-time) expense.

12          **J. Credit Cards**

13          I deny the request for \$9,500 per month for credit card expenses. There is no explanation  
14 for what these expenses are nor is there any justification for why they would be incurred on a  
15 monthly basis. That amount per month is unreasonable on its face. Even if this was a request for  
16 a one-time distribution, there is no explanation of what these bills cover. To the extent they were  
17 expended for luxury items or vacation airfare, they would be denied.

18          **K. Legal Fees**

19          Francine requests \$53,687.85 to cover her own legal fees along with \$56,259.50 to cover  
20 Dominic's legal fees. Whether to allow payment of attorney's fees out of frozen assets lies within  
21 my discretion. *See United States v. Monsanto*, 491 U.S. 600, 615-16 (1989); *FSLIC v. Ferm*, 909  
22 F.2d 372, 374 (9th Cir. 1990). Courts have "recognized the importance of preserving the integrity  
23 of disputed assets to ensure that such assets are not squandered by one party to the potential  
24 detriment of another." *Ferm*, 909 F.2d at 374.

1 Francine provides no explanation as to why funds should be released to pay for Dominic's  
2 attorney's fees. I deny that request.<sup>1</sup>

3 I deny Francine's request to pay her own attorney's fees as well. Francine avers she has  
4 no other source of funds other than what is contained in the FANE Trust. ECF No. 144 at 6.  
5 However, as noted in my preliminary injunction order, over \$1 million was withdrawn from DII  
6 Capital and ATM Enterprises' Merrill Lunch accounts. ECF No. 109 at 15. To date, I have seen  
7 no accounting for what happened to those funds. Additionally, some of Francine's exhibits raise  
8 more questions than they answer. For example, one of Dominic's credit card bills shows two  
9 payments totaling over \$5,000 were recently made. *In Camera* Submission, Ex. V. There is no  
10 explanation of where Dominic, who supposedly has no assets, was able to obtain over \$5,000 to  
11 make this payment. Similarly, the Bloomingdale's credit card shows a payment in the amount of  
12 \$1,240.74 and the Nordstrom card shows a payment in the amount of \$1,500, with no explanation  
13 of where those funds came from. *Id.*, Exs. Z, AA. Francine's attorneys' records are even more  
14 puzzling. After I entered the temporary restraining order on March 28, 2017, Francine made  
15 payments to her attorneys on March 31, 2017 in the amount of \$17,819.75 and on June 8, 2017 in  
16 the amount of \$10,000. *Id.*, Ex. BB. Additionally, someone apparently made \$5,000 payments to  
17 Dominic's attorneys' trust account on May 10, 2017 and June 29, 2017. *Id.*, Ex. CC.

18 Francine avers that she is making do by paying for items with credit cards and obtaining  
19 assistance from family members. ECF No. 144 at 6. Other than her affidavit, however, there is no  
20 evidentiary support for her statement. As another court observed, "[p]erhaps [I] would be in a  
21 better position to analyze [Francine's] request if [she] provided [me] with an accounting." *S.E.C.*  
22 *v. Private Equity Mgmt. Grp., Inc.*, No. CV 09-2901 PSG (EX), 2009 WL 2058247, at \*3 n.1  
23 (C.D. Cal. July 9, 2009). But given the shenanigans surrounding the defendants' movement of  
24 funds and their failure to be forthcoming in post-judgment discovery in the Texas case, I decline

---

26  
27 <sup>1</sup> Francine also provides no explanation as to why the amount requested for Dominic's fees does  
28 not deduct the \$10,000 that apparently has been deposited in his counsels' trust account. *See In Camera*  
Submission, Ex. CC.

1 to allow a distribution for attorney's fees absent a more fulsome accounting of the assets to which  
2 Francine actually has access.<sup>2</sup>

3 **L. In Camera Submission**

4 Francine does not explain why her monthly accounting was submitted *in camera*. I will  
5 retain her attorneys' records *in camera*. However, I see no reason why the remainder of her  
6 exhibits should not be available as part of the public record in this case, with appropriate  
7 redactions.<sup>3</sup> I therefore will direct Francine to file a publicly accessible version of her *in camera*  
8 submission with the following redactions:

- 9 - the account numbers and phone numbers on any exhibit;  
10 - the addresses where her children live and account numbers on Exhibits Q and S;  
11 - the student identification number on Exhibit T; and  
12 - the attorney records in Exhibits BB and CC.

13 To the extent Francine asserts that further material should be sealed beyond the above redactions,  
14 she must file a motion to seal that specifically identifies what portions of the *in camera*  
15 submission should be sealed and provides adequate support for doing so under *Kamakana v. City*  
16 *& Cty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006).

17 **M. Conclusion**

18 IT IS THEREFORE ORDERED that defendant Francine Magliarditi's motion for leave to  
19 withdraw monthly expenses (**ECF No. 138**) is **GRANTED in part and DENIED in part**. The  
20 motion is granted as follows:

21 1. Francine Magliarditi may withdraw from the enjoined accounts the following amounts  
22 on a monthly basis:

---

24 <sup>2</sup> Despite the lack of an accounting, I will grant Francine ordinary living expenses. That may  
25 change if discovery reveals that she has access to other assets.

26 <sup>3</sup> Exhibits A and B are lease agreements. Exhibits E-G are utility bills. Exhibits H-K are car lease  
27 and insurance bills. Exhibits L-O are life and health insurance bills. Exhibit P is a renter's insurance  
28 policy. Exhibit R is a generic "cost of attendance" breakout for the University of Nevada, Reno School of  
Medicine. Exhibits Q and S appear to be rental documents related to her children. Exhibit T is an invoice  
from Washington University. Exhibits U-AA are credit card bills that do not itemize purchases.



- \$1,000 per month to pay rent on the 9501 Canyon Mesa property in Las Vegas;
- \$633.08 per month for the lease of the Mercedes Benz;
- \$91.41 to pay the insurance on the Mercedes Benz;
- \$175 per month for gas; and
- \$2,316 per month for premium payments on three life insurance policies.

2. Francine Magliarditi may withdraw from the enjoined accounts on a one-time basis:

- \$58 to pay the gas bill for the 9501 Canyon Mesa property;
- \$256.39 to pay for the energy bill for the 9501 Canyon Mesa property; and
- \$1,755.75 for food for the remainder of 2017.

IT IS FURTHER ORDERED that upon proof of the amount of the monthly or semi-annual premium for health insurance, that amount will be approved for a distribution as appropriate.

IT IS FURTHER ORDERED that if the life or health insurance policies lapse for any reason, Francine must notify the court immediately so that the funds to pay the premiums are no longer distributed to her.

IT IS FURTHER ORDERED that on or before September 1, 2017, Francine shall file a publicly accessible version of her *in camera* submission with the following redactions:

- the account numbers and phone numbers on any exhibit;
- the addresses where her children live and account numbers on Exhibits Q and S;
- the student identification number on Exhibit T; and
- the attorney records in Exhibits BB and CC.

To the extent Francine Magliarditi asserts that further material should be sealed beyond the above redactions, she must file a motion to seal on or before September 1, 2017, that specifically identifies what portions of the *in camera* submission should be sealed and providing adequate support for doing so under *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). If Francine Magliarditi files a motion to seal, then the redacted version of her *in camera* submission will be due seven days after I rule on the motion to seal.

1 IT IS FURTHER ORDERED that if this order is insufficient to permit the financial  
2 institutions holding the subject accounts to release the funds as described above, Francine  
3 Magliarditi's counsel may prepare an order sufficient for that purpose. If so, a draft of that order  
4 shall be presented to the plaintiffs' counsel for prior approval before submitting it to the court.

5 DATED this 29th day of August, 2017.



7 ANDREW P. GORDON  
8 UNITED STATES DISTRICT JUDGE